ANDHRA PRADESH HIGH COURT

Puppalla Ramulu

Vs.

Nagidi Appalaswami

Civil Revn. Petn. No. 1075 of 1954

(Chandra Reddy, J.)

22.09.1953. 03.11.1955

ORDER

Chandra Reddy, J.

1. This is to revise the order of the District Munsif, Gudivada, dismissing the application filed by the petitioner for passing a decree in terms of an award dated 4-3-1950. The circumstances that have culminated in this revision petition may briefly be stated :

> 2. There were some disputes between the petitioner and respondent 1 regarding the rent alleged to have been due to the petitioner under a lease of a piece of land. The parties referred the matter to arbitration and an award was made on 4-3-1950 under which respondent 1 had to give the petitioner 14 bags of paddy.

2. The award was delivered to the present petitioner. As respondent 1 defaulted in complying with this term a suit SC 463 of 1950 was filed by the petitioner in the Court of the District Munsif, Gudivada, for recovering the value of 14 bags of paddy on the basis of trie award. This was dismissed on the ground that the award was not embodied in a decree.

3. The application giving rise to this C. R. P. was filed on 21-12-1951 for the relief mentioned above. The application was opposed chiefly on the plea that the petition was barred by reason of Article 178, Limitation Act. This objection found favour with the District Munsif and the petition was dismissed. This order is canvassed before me.

4. A preliminary objection is raised by Mr. Narayana Rao for respondent 1 that this C. R. P. is incompetent as an appeal lies against the order under revision to the Sub-Court. This is founded on a ruling of the Madras High Court in *Ponnusami Mudali v. Mandi Sundara, Mudali*[1]*,* and of Patna High Court in *Jagadish Mahton v. Sundar Mahton*[2]*,*

5. To understand the respective contentions of the parties, it is necessary to set out the

1 ILR 27 Mad 255 (FB)

2 ILR 27 Pat 86

relevant provisions of law bearing on the subject. Article 178, Limitation Act prescribed a period of 90 days for filing into Court an award under the Indian Arbitration Act of 1940, limitation commencing to run from the date of service of notice of the regular award.

6. Section 14, Arbitration Act runs thus :

> "14. (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.
> (2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court, shall thereupon give notice to the parties of the filing of the award. It is not necessary to refer to Sub-Section (3) as it has no bearing."

7. The other section of the Arbitration Act that is material is Section 17 which enacts :

> "Where, the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the, award, the Court, shall after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of or not otherwise in accordance with, the award."

The first point for consideration is whether the application is one filed under Section 14(2) and Section 17 or only one under the latter section. Under Section 14(2) if the arbitrators do not file the award the party can obtain an order of the Court directing the arbitrators to file the award. Can it be extended to a case where the award is already in the Court, no doubt, in connection with some other proceeding? In my opinion that section can apply only to a case where the help of the Court is sought for getting the award into Court by calling upon the arbitrators to do it. No doubt, in this case, Section 14 is quoted and also a prayer is included for taking the award on file. To my mind, it appears to be a surplus age as the award was in Court and there was nothing which the arbitrators could do further in the matter. There can be little doubt that Article 178, Limitation Act applies to an application under Section 14 (2), Arbitration Act. But the present case seems to fall under Section 17, Arbitration Act because the only relief asked for is the passing of a decree on the award. No appeal is provided in such an eventuality unless it comes under any of the exceptions specified therein and the only remedy is a revision petition.

8. Assuming it comes under Section 14, Arbitration Act does it make any difference so far as the appeal ability is concerned? Section 39 of the Act allows appeals against certain orders passed under the provisions of the Act itself. Appeals are provided only against orders (1) superseding an arbitration; (2) on an award stated in the form of a special case; (3) modifying or correcting an

award; (4) filing or refusing to file an arbitration agreement; (5) staying or refusing to stay legal proceedings where there is an arbitration agreement; or (6) setting aside or refusing to set aside an award. This ease is sought to be brought within the ambit of clause (6).

9. It is urged for respondent 1 that refusal to file an award amounts to setting aside the award. This view is sought to be supported by the judgment of the Madras and Patna High Courts. The judgment of the Madras High Court which decided that an order made on an application to file an award under Section 525, Civil Procedure Code, was appealable was based on the provisions of law then existing. Section 525, Civil Procedure Code, 1882 is the predecessor of Section 14 (2) Arbitration Act. That section read thus :

> "When any matter has been referred to arbitration without the intervention of a Court of justice and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over
> the matter to which the award relates, that the award be filed in Court."

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants. The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause within a time specified, why the award should not be filed." It is seen that the application had to be numbered and registered as a suit. Therefore, an order passed on such an application was regarded as a decree against which an appeal lay. There is some difference between that and the law contained in the Arbitration Act and bearing on the subject. This provision is recast in Section 14, Arbitration Act. An application under this section need not be registered as a suit and the order under the new section would not amount to a decree. Therefore, the doctrine of ILR 27 Mad 255 would not apply to Section 14, Arbitration Act.

10. ILR 27 Pat 86 seems to lend some countenance to the argument of the counsel for respondent 1. The learned Judges remarked that Section 14(2) of the Act not only required the arbitrators to file the award but also to give notice to the parties of the filing of the award. This necessarily leads to the further steps, culminating either in a judgment and decree in accordance with the award under Section 17, or the supersession of the award under Section 19. It cannot be seriously urged that this is not what the applicants intended. Hence, although only the filing of the award by the arbitrators is mentioned in the application the order of the Subordinate Judge is one refusing the relief sought by the applicants and can form the basis of an appeal if it comes within the operation of Section 39(1)." These observations do not contain any definite pronouncement that an order passed under Section 14(2) comes within the operation of clause (6) of Section 39(1). All that is stated is that such an order could form the basis of an appeal if it should come within the operation of Section 39(1). That apart, it seems to me that cl, (6) of Section 39 (1) of the Act cannot bear the interpretation that is sought to be put upon it by the counsel for respondent 1. An appeal is a creature of a statute and the right of appeal cannot be extended by implication. When the Legislature thought fit to provide for appeals only in six cases it is beyond the scope of a court to confer a right of appeal in other cases by inference. If it was thought that a right of appeal should be given in cases arising under Section 14(2) of the Act, certainly a specific provision would have been made in that behalf also. There are also very weighty reasons to negative the theory put forward by respondent 1. Refusing to file an award could not be

synonymous with refusing to set aside an award. Setting aside an award would arise only after the award is filed into Court.

11. Further, the procedures prescribed for the two are different. An award can be set aside only on grounds enumerated in Section 30, Arbitration Act. Again, an aggrieved party can file an application within 30, days of the date of service of the notice of filing of the award to set aside an award or to get an award remitted for consideration under Article 158, of the Limitation Act. So, they are two different and distinct things and a refusal to direct the filing of an award cannot be equated to setting aside the award.

12. This, however, need not detain me any further. Assuming an appeal is competent the right of this Court to exercise its revisional jurisdiction is not taken away as pointed out by me in *Narasimhulu Chetty v. Subbarajulu*[3], in which the matter has been discussed. Except in cases where an appeal lies to the High Court, this Court has ample powers to correct errors that come, to its notice under Section 115, Civil Procedure Code, though it would hesitate to do so normally. The only question therefore for consideration is whether this is a fit case in which Section 115, Civil Procedure Code could be invoked.

13. This takes me on to the point whether the application was barred by Article 178, Limitation Act. An application under Section 17, Arbitration Act would not attract Article 178. It is clear from the terms of that article that it applies only to an application for filing an award into Court which could only be under Section 14, Arbitration Act.

14. Even otherwise, this application is not barred. The third column of Article 178 recites "from the date of service of notice of the making of the award." It is indisputable that the service envisaged in this column is the one referred to in Section 14(1), which requires the arbitrators or umpire to give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award. It is only when this clause is complied with, the limitation begins to run. So, the terminus a quo is the service of notice of the making and signing of the award, etc. It is submitted by Mr. Narayanarao that in the instant case the conditions of Section 14(1) have been fulfilled because the award was read out by the arbitrators to the parties concerned and the latter's signatures were also obtained in token thereof. I do not think that this suffices to bring into play the period of limitation prescribed in Article 178, Limitation Act. What appears from the award itself is that before it was actually signed the contents of the award were made known

[3] Civ. Revn. Petn. No. 1111 of 1954, D/d. 2-11-1955 (Andhra)

to the parties. This is not a sufficient compliance with Section 14 because the notice envisaged therein is only one of making and signing of the award and of the amount of fees and charges payable, etc. It means that the notice should be served on the parties concerned after the award is signed by the arbitrators and should also contain the particulars referred to in it. The fact that the award came to the knowledge of the parties would not dispense with the necessity of service of notice in order to invoke the penalty of dismissal under Article 178, Limitation Act.

15. This view of mine is reinforced by a number of decided cases. In *Jai Kishen v. Ramlal Gupta*[4], Abdur Rahman J. took the view that notice in writing in the manner prescribed in Section 14(1) was absolutely necessary and limitation would start to run from that date. The view taken by the High Courts of Patna in ILR 27 Pat 86 and of Allahabad in *Misri Lal v. Bhagwati*

Prasad[5] and *Gangaram v. Radha Kishan*[6], accords with this principle. Thus, the period of limitation prescribed in Article 178 begins to run only from the date of service of notice laid down in Section 14(1), Arbitration Act. Admittedly this was not done in this case. It follows that the petitioner is not debarred from asking for the relevant reliefs by reason of Article 178 and the view of the trial Court is erroneous. As the District Munsif failed to exercise the jurisdiction vested in him by law on an erroneous impression that Article 178 stood in the way of his giving any relief, I will be justified in interfering with that order and setting it aside.

16. The C. R. P. is therefore allowed. The O. P. should be remanded to the lower Court for fresh disposal according to law. The parties will bear their own costs throughout.
Revision allowed.

[4] AIR 1944 La 398

[5] AIR 1955 All 573

[6] AIR 1955 Pun 145